UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3553

IN THE MATTER OF: TERREBONNE FUEL AND LUBE, INC.

Debtor.

PLACID REFINING COMPANY,

Appellant,

versus

TERREBONNE FUEL AND LUBE, INC.

Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-93-1246-L-2)

(April 4, 1994)

Before POLITZ, Chief Judge, DUHÉ, Circuit Judge and FULLAM*, District Judge.

JOHN P. FULLAM, District Judge:**

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* District Judge of the Eastern District of Pennsylvania, sitting by designation.

** Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Appellant Placid Refining Co. seeks review of an order of the district court dismissing as moot Placid's appeal from an order of the bankruptcy court. Terrebonne Fuel & Lube, Inc., the appellee and debtor in the underlying bankruptcy matter, has moved for dismissal of this appeal. For the reasons which follow, the order of the district court will be affirmed.

I.

The procedural history of this case is a tangled one. Terrebonne, a wholesale fuel distributor, filed for Chapter 11 protection on May 1, 1986. Its plan of reorganization was confirmed on April 16, 1987, over the objections of Placid, a major secured creditor. On April 24, 1987, three days before the order of confirmation became final, Terrebonne filed a complaint for equitable subordination against Placid, alleging that the latter had forced Terrebonne into bankruptcy. The bankruptcy court dismissed the adversary complaint on June 29, 1989, holding that Terrebonne had failed to state a claim for equitable subordination, and declining to exercise jurisdiction over what it viewed as essentially a breach of contract claim arising under state law. No appeal was taken. Terrebonne proceeded to bring its claim to state court; Placid filed exceptions on November 15, 1990, claiming that the order of confirmation was res judicata as to a claim that had

not been listed as an asset in the latter's bankruptcy schedules, nor disclosed in the plan of reorganization.

On February 3, 1993, Placid filed a reconventional demand in state court. Meanwhile, back in bankruptcy court, Terrebonne moved that Placid be held in contempt for seeking damages already discharged. Placid, in turn, asked the bankruptcy court to order Terrebonne to dismiss its state court claims on the grounds of res judicata. On March 23, 1993, the bankruptcy court held Placid in contempt and dismissed Placid's motion. Stating that the matter was neither a "core" proceeding nor "related to" the bankruptcy case, the court found that, three years after the adversary proceeding had been dismissed, and with the plan substantially consummated, it lacked jurisdiction over the controversy.

Placid appealed this ruling to the district court, but did not obtain a stay of the bankruptcy court's order pending appeal. While the appeal was pending, the state court dismissed with prejudice Placid's exception of res judicata and, after a trial on the merits, entered judgment for Terrebonne in the amount of $500,000. Placid filed a suspensive appeal, which is still pending in the state courts. However, the district court, relying on 28 U.S.C. §1738 and Fidelity Standard Life Ins. Co. v. First Nat'l Bank & Trust, 510 F.2d 272 (5th Cir.), cert. denied, 423 U.S. 864 (1975), held that the intervening judgment of the state court mooted Placid's appeal from the order of the bankruptcy court, and dismissed the action. Placid appeals to this court.

II.

In Fidelity Standard Life, supra, this court held that the binding force of a Louisiana judgment is not affected by the pendency of an appeal in the state court system. 510 F.2d at 273. This precedent is not squarely controlling, however, because in that case there was no contention that the Louisiana judgment was not final. Id.

The district court also relied on 28 U.S.C. §1738, which provides that the "judicial proceedings" of a state court "shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such State ... from which they are taken." A federal court is thus required to give to a state court judgment the same preclusive effect it would have in another court of that state.

The parties have expended considerable energy debating whether the judgment of the state court is entitled to preclusive effect. We need not, however, engage in a detailed analysis of the law of res judicata in Louisiana in order to resolve this dispute, because we conclude that Placid's appeal of the order below is in reality an attack on the bankruptcy court's order of June 29, 1989. Terrebonne's plan of reorganization included two features which are of crucial importance to any attempt to unravel the subsequent procedural snarls. First, all creditors, both secured and unsecured, were to be paid in full over a period of three to five years. Second, no claims against the estate were definitively

adjudicated. The debtor reserved the right to object to any and all claims. Moreover, the plan authorized the debtor to pursue any claims the estate might have against other parties, with the proceeds, if any, going to benefit the creditors and further fund the reorganization. Thus, while under ordinary circumstances it might appear inequitable for the debtor to wait until after confirmation to assert, for the first time, that a principal creditor's claims against the estate were more than balanced by tort claims the estate would assert against that creditor, the confirmed plan did permit that procedure; and there can be no doubt that, before the order of confirmation became final, the bankruptcy court and the affected parties were fully aware that such claims would be asserted by the debtor.

Terrebonne sought to maintain an adversary proceeding, within the bankruptcy proceeding, to assert that because of its tortious conduct in unnecessarily precipitating the bankruptcy, Placid's secured claim should be subordinated and Placid held liable to the estate for damages for the alleged breach of contract and associated tortious conduct. On Placid's motion to dismiss, the court ruled: (1) that Terrebonne failed to state a valid claim for equitable subordination because, since all creditors were to be paid in full, the necessary element of prejudice to the creditors was lacking; and (2) that whatever breach of contract and tort claims for damages the estate might have should be pursued in state court. As noted above, neither party appealed from that decision.

It is now apparent that the bankruptcy court was in error in concluding that the debtor's claims against Placid were not "core" matters, and that it could therefore decline to resolve them. The recent decision of this court in In Re. Baudoin (Bank of Lafayette v. Baudoin), 98l F.2d 736 (5th Cir. 1993), mandates the conclusion that lender-liability claims of a debtor against a listed creditor (for wrongfully precipitating the bankruptcy), are indeed core proceedings. Baudoin also makes clear that, at least in a Chapter 7 liquidation, the combined res judicata effects of allowance of the creditors' claim, foreclosure of the secured claim against mortgaged assets of the debtor, and final discharge of the debtor, preclude any later assertion of lender-liability claims against the creditor.

It is thus clear that, in this case, the debtor's lender-liability claims against Placid could, and should, have been resolved in the bankruptcy court. It is also clear that, if the confirmation order had finally resolved Placid's claims against the estate, or if the lender-liability claims had first been asserted after the reorganization plan had been consummated, the debtor's state court litigation would have been barred by res judicata.

But the present appeal must be resolved in light of what actually did occur: the fact is that the district court did, in effect, abstain from deciding the lender-liability issues, and expressly permitted the debtor to proceed in state court. The state court was entitled -- indeed, required -- to give the decision of the district court the same effect it would have in

another federal forum. It was therefore entirely appropriate for the state court to proceed with the litigation, and it would do violence to principles of comity, federalism and efficient judicial administration for this court now to interfere with the state court proceeding. Unlike the situation in Baudoin, supra, the state court judgment is not inconsistent with the confirmed plan of reorganization, and is entirely consistent with the unappealed-from abstention order.

Another avenue of analysis leads to the same result: Even though the abstention order was incorrect, it became the "law of the case" when the time permitted for an appeal had expired. It binds both parties, and should not be re-examined on appeal at this late date.

We therefore conclude that the district court reached the correct result. Although we do not agree with the suggestion that the state court judgment has rendered the present controversy moot, we do conclude that the state court litigation should be permitted to run its course. The order appealed from will be affirmed.